

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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|-----------------------------|---|---------------------------------|
| In re Application of: |) | |
| | : | Examiner: Sharmila S. Gollamudi |
| Nurhan P. Tutuncu |) | |
| | : | Group Art Unit: 1616 |
| Application No.: 09/825,992 |) | |
| | : | Confirmation No. 3697 |
| Filed: April 5, 2002 |) | |
| | : | |
| For: CONFECTIONERY PRODUCT |) | |
| HAVING A SALIVATION REGION | : | |
| AND AN ORAL COMFORT REGION) |) | |

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION UNDER 37 C.F.R. § 1.132
OF STEPHEN J. MOSS

Sir:

I, STEPHEN J. MOSS, D.D.S., M.S. declare as follows:

1. I obtained a degree in dentistry from New York University College of Dentistry in 1959.
2. I obtained a Master of Science degree in Biology from New York University Graduate School of Arts and Science in 1962.

3. I have more than forty years experience in the field of dentistry and I am presently a Professor Emeritus at the New York University College of Dentistry.

4. I have published over 200 scientific papers in the area of dentistry and related fields.

5. I am from time to time a consultant to Mars, Incorporated, and I understand that Mars, Incorporated is the assignee of the above captioned application.

6. I have reviewed an Office Action dated February 8, 2007 from the above-captioned application and make this declaration specifically to traverse the factual basis for the statement in the Office Action that either WO 99/589427 (hereinafter “Le”) or U.S. Patent No. 4,400,372 (hereinafter “Muhler”) teach that acids are antigingivitis agents.

7. Le is cited in the Office Action and, at page 1, lines 21-22, Le references Muhler for the proposition that acid has been “used in chewing gum to soften plaque on teeth.”

8. Muhler teaches a chewing gum composition having a combination of acid and abrasive which polishes the teeth. See Muhler, col. 1, lines 11-17. According to Muhler, regular chewing of the composition, as described, polishes the teeth, allowing plaque to be removed, and reducing the rate of dental plaque reformation. See Muhler col. 3, lines 54-59. The purpose of the polishing is to provide a smooth surface that is resistant to plaque and dental calculus reformation. See Muhler, col. 2, lines 9-16, and col. 2, line 67 to col. 3, line 2. Muhler does not teach or suggest that acid by itself removes plaque, but only in combination with an abrasive. See Muhler, col. 3, lines 36-37; col. 5, lines 27-30 and lines 53-55; col. 15, lines 45-47.

9. Le also describes a method of removing or preventing the deposition of plaque on teeth, but as with Muhler, this method comprises regularly chewing a chewing gum comprising a gum base, an abrasive and an acidulent. See Le, page 2, lines 27-28.

10. Muhler is not directed to the treatment of gingivitis, but to a method for removing plaque. Muhler does not disclose the measurement of gingivitis, which would be expected if the patent were directed to a treatment or prevention of gingivitis. Instead, Muhler measures “polishing scores.” See Muhler col. 13, line 7 - col. 17, line 22.

11. From the foregoing observations, I conclude that neither Le nor Muhler teaches the use of acid as an anti-gingivitis agent.

12. In my experience, acids are not used as anti-gingivitis agents.

13. Based on my own experience, I believe that acids, of a strength and in an amount that would normally be found in an edible composition, do not have a significant physical or chemical effect on plaque.

14. I understand that one rejection in the February 8, 2007 Office Action is based on U.S. Patent No. 5,284,659 (“Cherukuri”) in combination with Le. See page 3 of the Office Action.

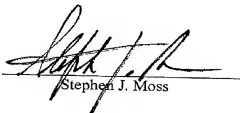
15. According to the Office Action, one would have had a reason to use an acid disclosed in Le in a tablet disclosed in Cherukuri (such as the tablet disclosed in Figures 5 and 6 and described at col. 11, lines 39-44 of Cherukuri) if one “desired to . . . reduce plaque on

teeth." Further according to the Office action, Le teaches that "acids reduce plaque, i.e. having an antigingivitis activity." See page 5 of the Office Action.

16. As I do not believe that acid by itself would remove plaque from teeth or act as an antigingivitis agent, I do not believe that a desire to reduce plaque on teeth would have been a valid reason to combine an acid according to Le in a tablet according to Cherukuri.

I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Subscribed this 7 day of January, 2008



Stephen J. Moss